

This is my Appendix  
to my Memorandum of  
Law, was unable to  
staple, Please Staple.  
Thank you.

07-334

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

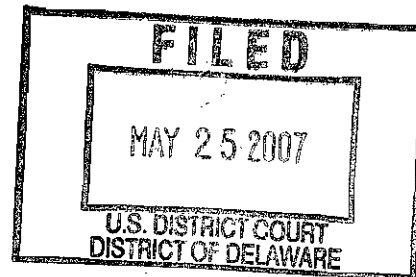
JOHN FOLKS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No.
	)	
THOMAS CARROLL, Warden et al,	)	
	)	
Respondent.	)	

---

PETITIONER'S APPENDIX IN SUPPORT OF HIS MEMORANDUM  
OF LAW IN SUPPORT OF HIS PETITION UNDER 28 U.S.C. § 2254  
FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

---

07-334



Dated: 5-23-07

John Folks  
John Folks, 00126234  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

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**PUBLIC DEFENDER OF THE STATE OF DELAWARE**  
**ELBERT N. CARVEL STATE OFFICE BUILDING**  
**820 NORTH FRENCH STREET, THIRD FLOOR**  
**P.O. BOX 8911**  
**WILMINGTON, DELAWARE 19801**

**LAWRENCE M. SULLIVAN**  
**PUBLIC DEFENDER**

**ANGELO FALASCA**  
**CHIEF DEPUTY**

**JAMES A. BAYARD, JR.**  
**ASSISTANT PUBLIC DEFENDER**

**TELEPHONE**  
**(302) 577-5121**

March 12, 2004

Mr. John T. Folks  
c/o Howard R. Young Correctional Institute  
1301 East 12th Street  
Wilmington, DE 19809

Dear Mr. Folks:

Please find enclosed a copy of the State's motion to declare you a habitual offender. If you disagree with any of the convictions noted in the motion, please write me as soon as possible. I will need to know which conviction(s) you disagree with and the basis for that disagreement.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. A. Bayard, Jr.".

James A. Bayard, Jr.  
Assistant Public Defender

JAB, Jr./ks  
Enclosure

*Letter received with first motion on or about  
(3-13-04,*

*Exhibit-78*

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR THE COUNTY OF NEW CASTLE

STATE OF DELAWARE

v.

JOHN FOLKS

:  
:  
: Case No. 0306015047  
:  
:

**MOTION TO DECLARE JOHN FOLKS AN HABITUAL OFFENDER**

COMES NOW the State of Delaware, by and through its attorney, Stephen M. Walther, Deputy Attorney General, which moves this Honorable Court pursuant to §§4214(a) and 4215(b) of Title 11 of the Delaware Code, to have JOHN FOLKS declared an habitual criminal offender and to impose the sentencing provisions of 11 Del. C. §4214(a) for the offenses of Robbery First Degree (IN03-07-0023) and Possession of a Deadly Weapon During the Commission of a Felony (IN03-07-0024). In support of this motion the State avers the following:

The defendant is an habitual offender by reason of the following convictions:

1. Charge: Carrying a Concealed Deadly Weapon

Court: Superior Court of the State of Delaware, New Castle County

Cr. A. No.: IN77-04-0925

Offense Date: April 7, 1977

Conviction Date: June 7, 1977

Sentence Date: June 7, 1977

Judge: The Honorable William Bush

Defense Attorney: David Lukoff, Esquire

Certified Court Records of these convictions are attached as Exhibit A.

(original motion)

Exhibit - 76

1st motion

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR THE COUNTY OF NEW CASTLE

STATE OF DELAWARE

v.

JOHN FOLKS

Case No. 0306015047

NOTICE OF MOTION

TO: James Bayard, Esquire  
Assistant Public Defender  
Public Defender's Office  
820 N. French Street, Third Floor  
Wilmington, DE 19801

PLEASE TAKE NOTICE that the within Motion to Declare **JOHN FOLKS** an  
Habitual Offender is being filed with the Court, and will be heard at the time of sentencing.



Stephen M. Walther  
Deputy Attorney General  
Department of Justice  
820 N. French Street, 7th Floor  
Wilmington, DE 19801

Dated: March 11, 2004

First motion received on or about (3-13-04) with  
letter (enclosed)

Exhibit-78



M. JANE BRADY  
ATTORNEY GENERAL

STATE OF DELAWARE  
DEPARTMENT OF JUSTICE

NEW CASTLE COUNTY  
Carvel State Building  
820 N. French Street  
Wilmington, DE 19801  
Criminal Division (302) 577-8500  
Fax: (302) 577-2496  
Civil Division (302) 577-8400  
Fax: (302) 577-6630  
TTY: (302) 577-5783

KENT COUNTY  
102 West Water Street  
Dover, DE 19904  
Criminal Division (302) 739-4211  
Fax: (302) 739-6727  
Civil Division (302) 739-7641  
Fax: (302) 739-7652  
TTY: (302) 739-1545  
March 24, 2004

SUSSEX COUNTY  
114 E. Market Street  
Georgetown, DE 19947  
(302) 856-5352  
Fax: (302) 856-5369  
TTY: (302) 856-2500

PLEASE REPLY TO :

New Castle County  
(302) 577-8500

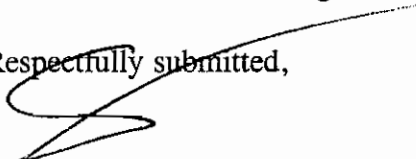
The Honorable Richard R. Cooch  
Superior Court Judge's Chambers  
New Castle County Courthouse  
500 North King Street  
Wilmington, DE 19801

RE: State of Delaware v. John Folks  
Case No. 0306015047

Dear Judge Cooch:

Enclosed please find an amended copy of the State's Motion to Declare John Folks an Habitual Offender. The State will present the Motion at the time of sentencing.

Respectfully submitted,

  
Stephen M. Walther  
Deputy Attorney General

SMW/agl

xc: James Bayard, Esquire  
Criminal Prothonotary

*copy of letter  
(sent to Judge on or about 3-24-04  
but received by me on or about (3-26-04))*

*Exhibit-79(A)*

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR THE COUNTY OF NEW CASTLE

STATE OF DELAWARE

v.

JOHN FOLKS

:  
:  
: Case No. 0306015047  
:  
:

MOTION TO DECLARE JOHN FOLKS AN HABITUAL OFFENDER

COMES NOW the State of Delaware, by and through its attorney, Stephen M. Walther, Deputy Attorney General, which moves this Honorable Court pursuant to §§4214(a) and 4215(b) of Title 11 of the Delaware Code, to have JOHN FOLKS declared an habitual criminal offender and to impose the sentencing provisions of 11 Del. C. §4214(a) for the offenses of Robbery First Degree (IN03-07-0023) and Possession of a Deadly Weapon During the Commission of a Felony (IN03-07-0024). In support of this motion the State avers the following:

The defendant is an habitual offender by reason of the following convictions:

1. Charge: Carrying a Concealed Deadly Weapon

Court: Superior Court of the State of Delaware, New Castle County

Cr. A. No.: IN77-04-0925

Offense Date: April 7, 1977

Conviction Date: June 7, 1977

Sentence Date: September 9, 1977

Judge: The Honorable William Bush

Defense Attorney: David Lukoff, Esquire

Certified Court Records of these convictions are attached as Exhibit A.

(received on or about  
3-26-04)

NOT 3-11-04  
OR  
3-12-04

(2nd motion)

(Amended motion)

Exhibit 179 (B)



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR THE COUNTY OF NEW CASTLE

STATE OF DELAWARE

v.

Case No. 0306015047

JOHN FOLKS

NOTICE OF MOTION

TO: James Bayard, Esquire  
Assistant Public Defender  
Public Defender's Office  
820 N. French Street, Third Floor  
Wilmington, DE 19801

**PLEASE TAKE NOTICE** that the within Motion to Declare JOHN FOLKS an  
Habitual Offender is being filed with the Court, and will be heard at the time of sentencing.



Stephen M. Walther  
Deputy Attorney General  
Department of Justice  
820 N. French Street, 7th Floor  
Wilmington, DE 19801

Dated: March 11, 2004

Copy of second motion received  
on or about (3-24-04)

Exhibit-79 (B)

~~Exhibit - 80 (ALL Pages)~~

5

1 MR. WALTHER: May I show to the Court what was  
2 filed with the clerk?

THE COURT: Yes.

MR. WALTHER: You're right, Your Honor. It  
3 does say "motion," not "amended motion."

6 (Pause.)

7 THE COURT: Yes. This document has been duly  
8 filed.

9 Is this the motion the State is relying on.

10 MR. WALTHER: Yes.

11 THE COURT: It's not an amended motion, but  
12 rather the original motion. With that confusion cleared  
13 up, will you please present the motion.

14 MR. WALTHER: Yes, Your Honor.

15 The motion is to have the defendant declared  
16 the status of habitual offender based upon three  
17 predicate convictions, the first of which was a carrying  
18 a concealed deadly weapon, for which he was convicted on  
19 June 7th, 1997, and sentenced on September 9th, 1997.  
20 Certified copies are attached to the State's motion as  
21 Exhibit A.

22 The second predicate conviction was an assault  
23 second degree, where he was convicted on February 16th

6

1 of '99, sentenced the same date.

2 And the third predicate is the robbery first  
3 degree charge, which he was convicted April 14th and  
4 sentenced the same date.

5 The State has given the defendant notice that  
6 the State would be seeking, having been sentenced on the  
7 charges of robbery first degree and possession of a  
8 deadly weapon during the commission of a felony, as a  
9 result of his jury conviction which Your Honor presided.

10 THE COURT: Thank you.

11 Mr. Bayard, defendant's position on the motion.

12 MR. BAYARD: First of all, we need, for the  
13 record, clarity this is under 4214(a).

14 THE COURT: The motion does say that. So the  
15 State is proceeding under the less onerous subsection  
16 (a), rather than subsection (b).

17 Mr. Walter, just to make the record clear.

MR. WALTHER: That's right, Your Honor.

MR. BAYARD: Your Honor, I've been over this.

20 Mr. Folk has been given both the original motion that  
21 was filed and the subsequent motion that was filed --

22 THE COURT: Excuse me. Was there a subsequent  
23 motion?

7

1 MR. BAYARD: Yes. The subsequent one is the  
2 March 11th, Your Honor. There was some typographical  
3 issues in the first one. And that's -- you know, one  
4 supersedes the other, and I understand that. And based  
5 on the motion filed March 11th of this year by  
6 Mr. Walther, there is no opposition to the facts as set  
7 forth by the State.

8 THE DEFENDANT: Your Honor --

9 THE COURT: No. This is not your time to  
10 speak. You may confer with Mr. Bayard if you wish.

11 MR. BAYARD: I do know that Mr. Folk had  
12 serious exception to one of the charges. I believe he's  
13 written to the Court about that. And, quite frankly,  
14 it's an interesting piece of logic that Mr. Folk is  
15 demonstrating. But as far as this document is  
16 concerned, am I objecting to it as it's written, the  
17 answer is no.

18 THE COURT: I'll hear from Mr. Folk if he has  
19 self examined the circumstances in this case.

20 THE DEFENDANT: Yes, sir. Yes, Mr. Cooch.

21 First of all, I received two motions. The  
22 first motion is dated the 11th. The second motion I  
23 have is also dated the 11th. The affidavit of mailing

8

1 on each of these motions that I have that I received is  
2 both on the 11th. However, this so-called -- this  
3 amended motion that the State is saying -- or according  
4 to the letter that I have that was dated to you, this  
5 motion was amended on the -- on or about the 24th.

6 I'm saying -- so, I mean, I'm just -- and also,  
7 another thing about this affidavit and mailing, Your  
8 Honor, I'm saying, pursuant to 29 Del.C. 2805, that  
9 don't even exist.

10 THE COURT: Mr. Folk, do you take issue with  
11 the fact that the three convictions occurred --

12 THE DEFENDANT: I take issue, Your Honor -- I'm  
13 sorry.

14 THE COURT: Do you take issue with the fact  
15 that the three felony convictions having occurred,  
16 arrest date, conviction date, sentencing date as set  
17 forth in the March 11th motion, do you take issue with  
18 the facts that the State has set forth with respect to  
19 those prior felony convictions?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: What is that factual dispute?

22 THE DEFENDANT: 1993 conviction, Your Honor.

23 THE COURT: And what claim of error do you make

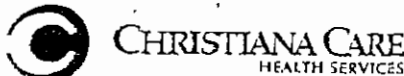
SUPERIOR COURT CRIMINAL DOCKET  
( as of 07/12/2004 )

Page 4

state of Delaware v. JOHN T FOLKS DOB: 06/13/1955  
 State's Atty: STEPHEN M WALTHER, Esq. AKA:  
 Defense Atty: JAMES A BAYARD, Esq.

No.	Event Date	Event	Judge
24	01/16/2004	CHARGE TO THE JURY FILED.	COOCH RICHARD R.
25	01/21/2004	ORDER FOR MTN TO SUPPRESS: DENIED. AND NOW, TO WIT, THIS 15TH DAY OF JANUARY, A.D., 2003, THE FOREGOING MTN HAVING BEEN HEARD AND CONSIDERED, IT IS HEREBY; ORDERED THE MTN TO SUPPRESS IS DENIED FOR ALL THE REASONS STATED ON THE RECORD.	COOCH RICHARD R.
26	01/27/2004	DEFENDANT'S LETTER FILED. TO: JUDGE COOCH	
28	01/27/2004	DEFENDANT'S LETTER FILED.	
27	01/30/2004	LETTER FROM: JUDGE COOCH RE: DEAR COUNSEL INCLOSED IS THE COPY OF A LETTER RECEIVED 1/27/04 FROM THE TRUE DEFENDANT WHICH IS FORWARDED TO YOU TO TAKE ANY ACTION APPROPRIATE.	COOCH RICHARD R. TO: JAMES BAYARD
	02/02/2004	DEFENDANT'S LETTER FILED.	
30	03/03/2004	DEFENDANT'S LETTER FILED.	
31	03/12/2004	STATE'S MOTION TO DECLARE AN HABITUAL OFFENDER FILED. BY STEPHEN M WALTHER, DAG WILL BE HEARD AT TIME OF SENTENCING (REFERRED TO JUDGE COOCH 03-31)	
32	03/23/2004	DEFENDANT'S LETTER FILED.	
33	03/24/2004	STATE'S MOTION TO DECLARE AN HABITUAL OFFENDER FILED/2ND TIME BY STEPHEN M WALTHER, DEPUTY ATTORNEY GENERAL PER MARIE-SEND UP MOTION, SHE'LL PUT W/FILE. (03/26)	
34	04/05/2004	DEFENDANT'S REQUEST FILED. TO: JUDGE COOCH REQUEST TO PROCEED PRO SE DURING HABITUAL OFFENDER HEARING	COOCH RICHARD R.
35	04/15/2004	LETTER FROM: JUDGE RICHARD R. COOCH TO: MR. JAMES A. BAYNARD, ESQ. RE: STATE OF DELAWARE V. MR. JOHN T. FOLKS MR. JOHN T. FOLKS IS REQUESTING TO REPRESENT HIMSELF.	
38	05/05/2004	SUBPOENA(S) SERVED BY SHERIFF.	

~~Exhibit~~  
 Exhibit - 81, court docket numbers, 31, and 33



EDAS

## Emergency Department

## NURSING ASSESSMENT SHEET/INTERDISCIPLINARY CARE RECORD

## Instructions for Use:

- Side one to be completed for Patient being admitted.
- Side two to be completed for patients being Discharged or Transferred.

DATE: 6/22/03

Side 1

FOLKS, JOHN

AGE 048 DOB 06 23 1955

06/22/03 00004846740 7

MRN 000900017345

Folks John

INITIAL ASSESSMENT		Time 2210	<input checked="" type="checkbox"/> Triage	<input type="checkbox"/> Core	<input type="checkbox"/> F.T.	Time 2210	Initials CH	GLASGOW COMA SCORE		DOMESTIC VIOLENCE	
Sudden onset CP on arrival @ police station - brought in BISE WPD handcuffed 3/10 CP						Temperature m 36.9	1. Eye Opening	Response Score	<input type="checkbox"/> No		
						Pulse (p) 64	Spontaneous To Voice To pain None	4 3 2 1	<input type="checkbox"/> Suspected		
						Respiration Rate (RR) 18	2. Best Verbal Response	Response Score	<input type="checkbox"/> Yes		
						Blood Pressure (BP) 111/59	Oriented Confused Inappropriate Words Incomprehensible None	5 4 3 2 1	<input type="checkbox"/> Brochure given		
Pain Level: (0-10)						Initials CH	3. Best Motor Response	Response Score	<input type="checkbox"/> Phone referral 762-6110		
Past Medical History: HTN epilepsia DM						Weight kg	Obeys Command Purposeful Move Withdrawn Flexion Extension None	6 5 4 3 2 1	Cleared from backboard time: by:		
						<input type="checkbox"/> Estimated <input type="checkbox"/> Actual	Total	15			
MEDICATIONS						TRIAGE TREATMENT					
ALLERGIES (Date/Reaction)						<input type="checkbox"/> wheelchair <input type="checkbox"/> splint / sling <input type="checkbox"/> ice <input type="checkbox"/> EKG @					
denies						Offered: <input type="checkbox"/> stretcher <input type="checkbox"/> c-collar <input type="checkbox"/> wound care					
was taking HCTZ - ran out						<input type="checkbox"/> Tylenol/Motrin mg Given @					
						<input type="checkbox"/> Xray of					
						<input type="checkbox"/> Finger Stick mL/dl @					
						<input type="checkbox"/> minineb treatment @					
Tetanus Immunization: <input type="checkbox"/> No <input type="checkbox"/> Yes, Date <input type="checkbox"/> UNK						PRIMARY NURSE ASSESSMENT					
Time		Device/Gauge	Solution	Site	Rate	Initials	Time		Initials		
							LUNGS		ABDOMEN		
							Clear Bilaterally <input type="checkbox"/>		Soft, Non-tender Active Bowel Sounds <input type="checkbox"/>		
							Other:		Other: <input type="checkbox"/> NSR <input type="checkbox"/>		
							PUPIL SIZE		VISUAL ACUITY		
							(R) (L)		(R) (L)		
							mm mm		mm mm		
INTERDISCIPLINARY NOTES											
TIME	Pulse	Rhy	Resp	BP	POx	Pain Level	Initials				
							No Sleep x 5 days - denied cocaine - c/o bilateral pain both legs				
2210	112	112	112	112	112	112	OT manipulating when talks Request Hoyer when asked about chest pain. Says yes then falls back to sleep. No pain. No police. F.A.M. 10/10				
2330							Folks John				
SIGNATURE/TITLE						PRINT NAME					
Lorraine J. Butler RN						Butler					
K. Hagan RN						Hagan RN					
K. Hagan RN						Hagan RN					

EXHIBIT 2

EXHIBIT 2



M. JANE BRADY  
ATTORNEY GENERAL



WJS

**STATE OF DELAWARE  
DEPARTMENT OF JUSTICE**

**NEW CASTLE COUNTY**  
Carvel State Building  
820 N. French Street  
Wilmington, DE 19801  
Criminal Division (302) 577-8500  
Fax: (302) 577-2496  
Civil Division (302) 577-8400  
Fax: (302) 577-6630  
TTY: (302) 577-5783

**KENT COUNTY**  
102 West Water Street  
Dover, DE 19901  
Criminal Division (302) 739-4211  
Fax: (302) 739-6727  
Civil Division (302) 739-7641  
Fax: (302) 739-7652  
TTY: (302) 739-1545

**SUSSEX COUNTY**  
114 E. Market Street  
Georgetown, DE 19947  
(302) 856-5352  
Fax: (302) 856-5369  
TTY: (302) 856-4698

PLEASE REPLY TO:

June 6, 2005

New Castle County  
(302) 577-8500

The Honorable Richard R. Cooch  
Superior Court Judges' Chambers  
New Castle County Courthouse  
500 North King Street  
Wilmington, Delaware 19801

**RE: State of Delaware v. John Folks**

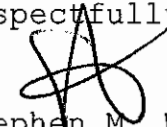
Dear Judge Cooch:

Your Honor has scheduled a hearing in this matter for June 17, 2005. Unfortunately, I will be on vacation and therefore not available from June 13 - 24, 2005.

Accordingly, I respectfully request that the Court schedule another date for the hearing.

For purposes of Your Honor's schedule, I intend to call two witnesses to connect the defendant to the 1977 predicate conviction. This will be done by fingerprints.

Respectfully submitted,

  
Stephen M. Walther  
Deputy Attorney General

SMW/agl  
Xc: John Folks ✓  
Angelo Falasca, Esquire

Exhibit-86

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

John Folks

Defendant - Below

Movant,

V.

STATE OF DELAWARE,

Respondent.

CR. A. NO. 0306015047-A

IN 03-07-0023-R1

IN 03-07-0024 R1

THIS IS DEFENDANT'S "EXTENDED SUPPLEMENTAL REPLY"  
TO THE STATE'S RESPONSE TO DEFENDANT'S POST-CONVICTION RELIEF  
MOTION.

(1)  
Exhibit-A

(1) Petitioner would like the following objections noted for the record:

- (A) the state's untimely memorandum.
- (B) the state was given an extension of time, even though the state never asked for one.
- (C) the state was allowed to address to more than just my post-conviction motion and/or memorandum of law, because they waited until after I filed my reply to the counsel's affidavits to file their memorandum.

ARGUMENT

(1)(D) Petitioner argues that the state's memorandum should not be accepted and that his post-conviction motion be decided based on the merits of his motion, counsel's affidavits and petitioner's reply to counsel's affidavits. Petitioner further argues that if he filed an untimely motion, his motion would have been procedurally barred and/or dismissed.

(2)

EXHIBIT - A

IN REPLY TO THE STATE'S RESPONSE TO DEFENDANT'S

POST-CONVICTION RELIEF MOTION, THE DEFENDANT ASSERTS THE  
FOLLOWING:

(2) Petitioner argues that he has proven the two prong test for judging his ineffective claim and that he has identified his counsel's acts of omissions that are alleged not to have been result of reasonable professional judgment, and that there is a reasonable probability that "but for" counsel's unprofessional errors, result of the proceeding would have been different. Petitioner also argues that he has proven his counsel (James A. Bayard Jr.) prejudiced him as a result of his ineffectiveness and that his errors were so serious, as to deprive petitioner of a fair trial, a trial whose result is reliable, see; *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052. see; Petitioner's memorandum of law, Pages 3 To 11. Also see; *Saunders v. State*, 538 A 2d 723.

(3) Petitioner argues that according to the double Jeopardy clause of the fifth amendment, according to Delaware's own law, 11 Del. C. § 206 (a) (1) and according to the blockburger test, blockburger, 52 S. Ct. 180, 182; Petitioner was placed in double Jeopardy and sentenced twice as the result of and/or for the same weapon, see; Petitioner's memo. of law, pages; 13, 14 and 15.



Petitioner also argues that this ground should not be barred by procedural default set forth in Rule 61(i)(3), because Petitioner tried to introduce the double jeopardy claim in the proceedings leading up to the judgment, but was prevented by his attorney, (James A. Bayard Sr.).

Petitioner argues that rather being barred, his double jeopardy claim should be heard on its merits, otherwise the very ineffectiveness of my counsel at the trial will also bar my post-conviction relief. The violation of my constitutional right to effective assistance of counsel will prejudice me in both the trial and in this proceeding. See: state's memorandum, page- 3, letter A.

(4) Petitioner argues that the record supports, through his correspondence with the courts and his suppression hearing, that he tried to introduce the exculpatory claim (interrogation tape) into the proceedings and again was prevented by his counsel (James A. Bayard Sr.) from doing so. Petitioner argues that his claim that the state failed to introduce exculpatory evidence should not be barred by Rule 61(i)(3), but should be heard on the merits. Petitioner also asserts that none of his claims should be barred by Rule 61(i)(3), because if there were any procedural defaults, they were caused by Petitioner's counsel (James A. Bayard Sr.), thus prejudicing Petitioner, by not preserving issues and denying Petitioner due process of law. Petitioner also asserts that this claim is not in a conclusory fashion, because the record and Petitioner's argument supports this claim. See: state's memorandum, page, 4, letter B. See: Gray v. Green, 800 F.2d 644 (7th Cir. 1986). See: U.S. v. Pierce, 959 F.2d 1297 (5th Cir. 1992), and see: -

(4)  
Exhibit-A

(5) Petitioner argues that his Batson claim is not conclusory in nature, but is supported by the record. Petitioner asserts that the jury selection process speaks for itself and that the petitioner's counsel, (James A. Bayard Sr.) along with the state, purposely engaged in discriminating against Afro-American jury members during the peremptory challenges, thus prejudicing the petitioner and denying petitioner a fair trial - see: state's memorandum, page, 5, see: Jury Selection Process.

(6) Petitioner argues that even the state's memorandum showed where counsel James A. Bayard Sr. lied in his affidavit, when he said that "the relative size between Mr. Mevey and Petitioner was not a focus of this case." see: James A. Bayard Sr. affidavit, letter (d) (3), see: state's memorandum, page 7, (reference to T-128) and see: petitioner's memorandum of law, exhibit 176, page-128.

(7) Petitioner argues that his counsel (James A. Bayard Sr.) breached confidentiality against him and that this claim should not be denied under Rule 61(i)(4), because it was not formally adjudicated and therefore is not moot. Petitioner argues that issues that go to fundamental fairness and constitutional rights should never be considered moot. When Petitioner's counsel broke confidentiality, Petitioner lost confidence in his ability to speak openly to his counsel, this effectively denied me my right to participate

in my own defense. The breach of confidentiality and fear of future breaches created a situation that was fundamentally unfair and therefore is not moot. See: state's memorandum, Page 8, Letter G, see: Counsel James A. Bayard Jr. affidavit, admitting breach, Letter (G). Petitioner argues that his Counsel James A. Bayard Jr. never had his best interest in mind from the time he was assigned to Petitioner's case and there's a very strong and probable possibility that his Counsel was sabotaging and weakening his case from the beginning. See: Osburn v. Shillinger, 861 F. 2d 612 (10th Cir. 1988). Petitioner also argues that under doctrine of mootness, action must be dismissed when it fails to present controversy which is capable of judicial resolution. See: Mitchell v. Board of Adjustment of Sussex County, 706 A.2d 1027. Petitioner's case differs from the Mitchell case, because in Petitioner's case, there remains a controversy, Petitioner believes that the breach of confidentiality was fundamentally unfair and the state disagrees. There still remains a venue for resolution of the conflict as I seek post-conviction relief because of this unfairness. Petitioner contend that when his Counsel (Mr. James A. Bayard Jr.) breached confidentiality against him, he tainted the entire proceedings, from the pre-stages of his trial to the sentencing.

CONCLUSION

Petitioner contends that he has Proven his case and request that this honorable court grant him relief. Petitioner request that either his conviction and/or sentence be vacated and he be either retried and/or re-sentenced appropriately.

Respectfully submitted,

John Folks  
JOHN Folks, Pro-se  
1181 Paddock Road  
D.C.C.  
Smyrna, Delaware  
19977

Date: 8-15-06

(7)

Exhibit-A

IN AND For NEW CASTLE COUNTY

State of Delaware

plaintiff

John Folks

Defendant

Ca No# 0306015047A

In 03070023 R1

In 03070024 R1

Motion For Summary Judgment  
Pursuant To Rule 56 sup,ct,rules

Now Comes John Folks and moves This  
Honorable Court For Summary Judgment

Where as on mar 27, 2006 a Post Conviction  
motion was presented To This Court Pursuant To . . .  
DE,R,SUPER,CT Crim Rule 61 .

Where as on mar 30, 2006 The Court ordered That  
Counsels: Bayard O'Donnell file a affidavit in answer  
To The motion by Apr 21, 2006

Where as on mar 30, 2006 The Court ordered  
That The State To file a memorandum in response  
To counsels response, Taking into account The Factual  
assertions in The motion's, by may 22, 2006 .

The State ie: Department of Justice has failed  
To file a response as ordered.

Exhibit-B  
~~21~~

Where for a motion for extension of Time  
has not been filed or received by The above

I John Folks do pray This Honorable Court  
To find in favor of The motion, Due To States  
Default and further would pray That The Honorable  
Court To order a evidentiary Hearing, and/or  
vacate movant's Conviction and/or sentence or  
Whatever The court deems Just.

This Day 5-30-06

John Folks

John Folks

Exhibit-B

A-4



SUPERIOR COURT CRIMINAL DOCKET  
( as of 10/20/2006 )

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State of Delaware v. JOHN T FOLKS  
 State's Atty: STEPHEN M WALTHER , Esq.  
 Defense Atty: JAMES A BAYARD , Esq.

AKA:

DOB: 06/13/1955

No.	Event Date	Event	Judge
		DEFENDANT'S LETTER TO PRESIDENT JUDGE VAUGHN FILED RE: PENDING MTNPCR IN NEW CASTLE BEFORE JUDGE COOCH.	
95	06/09/2006	STATE'S MEMORANDUM IN RESPONSE TO DEFENDANT'S RULE 61 MOTION FILED. FILED BY STEPHEN WALTHER, DAG REFERRED TO JUDGE COOCH	
96	06/20/2006	DEFENDANT'S LETTER FILED. REFERRED TO JUDGE COOCH OBJECTION TO STATE RESPONSE	
97	07/11/2006	LETTER FROM RRC TO MR. WALTHER AND J. FOLKS I AM IN RECEIPT OF MR. FOLKS' LETTER OF 6/15/06 REQUESTING THAT THE COURT NOT CONSIDER THE STATE'S RESPONSE BECAUSE IT WAS NOT FILED BY THE ORIGINALLY ESTABLISHED DEADLINE DATE. THE COURT, IN ITS DISCRETION GRANTED THE STATE A SHORT EXTENSION TO FILE ITS RESPONSE. ACCORDINGLY, THE COURT WILL CONSIDER THE STATE'S RESPONSE. HOWEVER, SINCE MR. FOLK'S REPLY WAS FILED PRIOR TO RECEIVING THE STATE'S RESPONSE, THE COURT WILL ALLOW MOVANT TO FILE A "SUPPLEMENTAL REPLY" TO THE STATE'S RESPONSE ON OR BEFORE 7/25/06 IF MR. FOLKS WISHES TO DO SO. IT IS SO ORDERED, JUDGE COOCH	
98	07/11/2006	MOTION FOR SUMMARY JUDGEMENT FILED PRO SE. REFERRED TO JUDGE COOCH.	
101	07/25/2006	DEFENDANT'S LETTER TO PRESIDENT JUDGE VAUGHN FILED. RE: NEW CASTLE COURT DOCKET.	
99	08/21/2006	DEFENDANT'S EXTENDED SUPPLEMENTAL REPLY TO THE STATE'S RESPONSE TO DEFENDANT'S POSTCONVICTION RELIEF MOTION FILED. PRO SE REFERRED TO JUDGE COOCH	
102	09/25/2006	COOCH RICHARD R. ORDER: UPON DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF: DENIED. IT IS SO ORDERED	
103	09/25/2006	LETTER FROM JUDGE COOCH TO STEPHEN WALTHER, DAG & JOHN FOLKS. RE: ENCLOSED PLEASE FIND AN ORDER IN THE ABOVE-CAPTIONED CASE.	

\*\*\* END OF DOCKET LISTING AS OF 10/20/2006 \*\*\*  
 PRINTED BY: CSCVELL

Court Docket sheet, Number-98

SUPERIOR COURT CRIMINAL DOCKET  
( as of 10/20/2006 )

Page 5

State of Delaware v. JOHN T FOLKS  
 State's Atty: STEPHEN M WALTHER , Esq.  
 Defense Atty: JAMES A BAYARD , Esq.

DOB: 06/13/1955

AKA:

No.	Event Date	Event	Judge
39	05/05/2004	SUBPOENA(S) SERVED BY SHERIFF.	
40	05/05/2004	SUBPOENA(S) SERVED BY SHERIFF.	
41	05/05/2004	SUBPOENA(S) SERVED BY SHERIFF.	
42	05/05/2004	SUBPOENA(S) SERVED BY SHERIFF.	
43	05/05/2004	SUBPOENA(S) SERVED BY SHERIFF.	
45	05/07/2004	DEFENDANT'S LETTER FILED. LETTER REGARDING STATE DECLARING THE DEFENDANT A HABITUAL OFFENDER. *SEE FULL LETTER IN FILE.	
37	05/12/2004	DEFENDANT'S REQUEST FILED. TO: JUDGE COOCH REQUEST TO BE ALLOWED TO REPRESENT SELF DURING SENTENCING	
36	05/17/2004	LETTER FROM SUPREME COURT TO JOHN FOLKS RE: SUPREME COURT CAN TAKE NO ACTION WITH RESPECT TO YOUR LETTER. THE SUPREME COURT IS AN APPELLATE COURT. THERE IS NO APPEAL PENDING AT THIS TIME, THEREFORE THE COURT LACKS JURISDICTION TO ADDRESS THE CONCERNS RAISED IN YOUR LETTER.	
44	06/07/2004	LETTER FROM: JUDGE COOCH I'AM IN RECEIPT OF YOUR MAY 16,2004 LETTER TO ME REQUESTING THAT MR. BAYARD BE DISCHARGED AS YOUR ATTORNEY AND THAT NEW LEGAL COUNSEL "OUTSIDE OF THE PUBLIC DEFENDER'S OFFICE" BE APPOINTED TO ASSIST YOU AT YOUR HABITUAL OFFENDER HEARING, SENTENCING AND FURTHER APPEAL. NO ADEQUATE BASIS HAS BEEN SET FORTH BY YOU IN THIS LETTER AR ANY OTHER PRIOR SUBMISSION FOR THE GRANTING OF SUCH NEW LEGAL ASSISTANCE. IMMENDIATELY PRIOR TO YOUR SENTENCING ON JULY 2, 2004 THE COURT WILL DETERMINE IF YOU WISH TO REPRESENT YOURSELF AT SENTENCING WITH MR. BAYARD ACTING AS STAND-BY COUNSEL, WHETHER YOU WISH TO REPRESENT YOURSELF WITHOUT ANY ASSISTANCE OF ANY KIND FROM MR. BARD, OR WHETHER YOU WISH TO HAVE MR BAYARD.	COOCH RICHARD R. TO: MR FOLKS
46	06/08/2004	DEFENDANT'S LETTER FILED. TO: JUDGE COOCH RE:REGARDING RAPE CONVICTION	

Court Docket sheet, number - 46



IM: John Folks  
SBI# 126234 UNIT Mh0-21  
DELAWARE CORRECTIONAL CENTER  
1181 PADDOCK ROAD  
SMYRNA, DELAWARE 19977

U.S.M.S.  
PAY



U.S.M.S.  
X-RAY

MR. Peter T. Dalleg - Clerk of the Court  
U.S. District Court of Delaware  
844 North King Street, Lockbox 18  
Wilmington, Delaware  
19801